IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO: 446 OF 2006 (S/S)

Jagdish Chandra Mamgain, S/o Sri Indramani Mamgain, R/o Village Bhumkapni (Baisokhla), Tehsil Ranikhet, District Almora.

-----Petitioner

Versus

1- State of Uttaranchal, through Secretary-Karmik, Civil Secretariat, Dehradun Uttaranchal.
2- Public Service Commission Uttaranchal, Haridwar Uttaranchal.
3- Chief Engineer Level-1, Public Works Department, Yamuna Colony, Dehradun, Uttaranchal.
4- Chief Engineer Level-1, Irrigation, Yamuna Colony, Dehradun, Uttaranchal.
5- Upper Sachiv, Panchayati Raj, Rural Engineering Service, Rural Department, Civil Sercretariat, Dehradun Uttaranchal.
6- Chief Engineer, Rural Engineering service, Raipur Road, Dehradun, Uttaranchal.
7- Chief Engineer Agriculture Department, Dehradun, Uttaranchal.

-----Respondents

Sri S.S. Yadav, learned counsel for petitioner.
Standing Counsel for respondents.

Dated : March 30, 2006.

HON'BLE RAJESH TANDON, J.

Heard Sri S.S. Yadav, learned counsel for the petitioner and Standing Counsel for the respondents. Both the parties have stated that the writ petition may be disposed of at the admission stage.

By means of this writ petition, the petitioner is seeking a writ of certiorari quashing the Notification dated 16.05.2004 passed by the respondents and further with a prayer to command the respondents to consider the case of the petitioner according to

clause 4 of the observations made by the Hon'ble Apex Court in case of U.P. State Road Transport Corporation and another Vs U.P. Parivahan Nigam Shishuksh Berojzar Sang and others.

Brief facts giving rise to the present writ petition are that the petitioner has completed Diploma Courts in Civil Engineering from Govt. Polytechnic, Dwarahat, district Almora and after passing the said course he was selected for apprenticeship course and he was sent for one year training under the Public Works Department, Nainital in Construction Division. It has been further submitted that the petitioner had undergone the training w.e.f. 18.02.1987 to 18.2.1988 and a certificate to this effect was issued to him. In terms of the judgment and order passed by the Supreme Court the State Government has issued and order directing the heads of all the departments that the apprentice trainees shall be given preference. It has further been submitted that the respondents have issued an advertisement inviting applications from the qualified candidates for appointment on several posts of Junior Engineer including the Rural Engineering Services Department but in the advertisement it has not been mentioned that the candidates who have completed apprentice trainees shall be given preference. Although the petitioner has submitted his application in the prescribed form for consideration on the post of Junior Engineer (Civil) but the benefit of the apprentice training is not being give to him.

It has also been stated that the petitioner has submitted representations to the respondents to the effect that the benefit of apprentice training is not being given to him but the same were un-replied. Therefore, some of the trained diploma Engineers filed writ petition No. 44(S/B) 2002 before this Court which was finally disposed of on 18.07.2003 with the direction to consider the claims of the petitioner and decide his representation in the light of the law laid down by the Apex Court.

In writ petition No.44 (S/B) 2003 the Division Bench of this Curt has framed the following norms in accordance with the judgment of the **Apex Court in the case of U.P. State Road Transport Corporation and another Vs U.P. Parivahan Nigam Shishukhs Berozagar Sangh and others (1995) 2 SCC (1)** and has directed for consideration of his representation:

"*In the background of what has been noted above, we state that the following would be kept in mind while dealing with the claim of the trainees to get employment after successful completion of their training:*

(1) Other things being equal, a trained apprentice should be given preference over direct recruits.

(2) For this, a trainee would not be required to get his name sponsored by the employment exchange. The decision of this court in Union of India Vs Hargopal, AIR 1987 SC 1227, would permit this,

(3) If age bar would come in the way of the trainee, the same would be relaxed in accordance, with what is stated in this regard, if any, in the concerned service rule. If the service rule is silent on this aspect, relaxation to the extent of the period for which the apprentice had undergone training would be given.

(4) The training institute concerned would maintain a list of the persons trained yearwise. The persons trained earlier would be treated as senior to the persons trained later. In between the trained apprentice, preference shall be given to those who are senior."

However, the petitioner has prayed that in view of the judgment of the Apex Court in the case of U.P. State Road Transport Corporation and another Vs U.P. Parivahan Nigam Shisukhs Berozgar Sangh and others (1995) 2 SCC (1), clause 4 may be complied with in accordance with the order dated 18.07.2003 passed by the Division Bench of this Court.

Learned counsel for the petitioner states that clause 4 of the aforesaid order is important. However, in view of the aforesaid judgment of the Apex Court the norms will be followed while considering the representation made by the petitioner. The relevant paragraph 12 is quoted below:

"That the petition on 07.01.2002 and 31.01.2002 submitted representations through registered post to the respondent no. 1 and the Chief Sectretary, stating therein that in view of several Government order issued in terms of the judgment and orders passed by the Hon'ble Supreme Court and High Court the benefit of apprentice training is not being given to him as such it was prayed that necessary orders in this regard may be passed and the representations of the petitioner are unreplied."

In view of the facts and circumstances, the respondents are directed to decide the representation of the petitioner within a period of six weeks in accordance with the norms framed by the Apex Court as well as the order dated 18.07.2003 passed by the Division Bench of this Court and while disposing of the representation of the petitioner sub clause 4 of the norms shall be followed.

With the aforesaid observations, the writ petition is disposed of. No order as to costs.

(Rajesh Tandon, J)

30.03.2006
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